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16 ORACLE AMERICA, INC.

17 UNITED STATES DISTRICT COURT

18 NORTHERN DISTRICT OF CALIFORNIA

19 SVETLANA BLACKBURN,

20 Plaintiff,

21 v.

22 ORACLE AMERICA, INC.,

23 Defendant.

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Case No. 3:16-cv-02925-EDL

**DEFENDANT ORACLE AMERICA,
INC.'S ADMINISTRATIVE MOTION
TO CONSIDER WHETHER CASES
SHOULD BE RELATED**

Date Action Filed: June 1, 2016

1 Defendant Oracle America, Inc. (“Oracle” or “Defendant”) respectfully submits this
2 Administrative Motion to Consider Whether Cases Should be Related, pursuant to Civil Local
3 Rules (“Civ. L.R.”) 3-12(b) and 7-11.

4 **ACTION REQUESTED**

5 Pursuant to Civ. L.R. 3-12(b), Oracle informs the Court that the following cases are
6 related:

- 7 1. The instant case, *Blackburn v. Oracle America, Inc.*, Case No. 3:16-cv-02925
8 (“Blackburn Litigation”), filed in the Northern District of California on June 1, 2016; and
9 2. *Klarfeld et al. v. Oracle Corp., et al.*, Case No. 3:16-cv-02966 (“Klarfeld
10 Litigation”), filed in the Northern District of California on June 2, 2016.

11 The Klarfeld Litigation is a securities class action that, as of necessity, has been assigned
12 to a District Judge.¹ The Blackburn Litigation is a Sarbanes-Oxley/Dodd Frank whistleblower
13 action. Oracle respectfully submits that these cases are related because they arise out of the same
14 underlying facts, and as a result there may be duplication of effort by different judges as well as a
15 possibility of conflicting or inconsistent results should the cases proceed in parallel before
16 different judges. *See* Civ. L.R. 3-12(a).

17 Oracle also informs the Court that a motion to relate has been filed in *Tomassini v.*
18 *Oracle*, Case No. 3:16-cv-03583, which is an ERISA class action pending before the Honorable
19 Jacqueline Scott Corley (the “Tomassini Litigation”). The plaintiff in the Tomassini Litigation
20 filed a motion to relate it to the Klarfeld Litigation on substantially similar grounds as those
21 contained in the instant motion and has requested that the Tomassini Litigation be reassigned to
22 the Klarfeld Court. Upon information and belief, the Honorable Edward M. Chen, the presiding
23 judge in the Klarfeld Litigation, will decide that motion. *See* Civ. L.R. 3-12(f). A copy of that
24 motion is attached as Exhibit C to the Declaration of Renee B. Phillips in Support of Motion to
25 Relate (“Phillips Dec.”), submitted herewith. Oracle will not oppose that motion.

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27 ¹ Under General Order No. 44, Assignment Plan, Section E, securities class actions cannot be
assigned to magistrate judges.

1 MEMORANDUM

2 Civ. L.R. 3-12(b) directs a party to file an administrative motion to consider whether an
3 action filed in this District may be related to an action that is pending in this District. Oracle
4 submits that the Blackburn Litigation may be related to the Klarfeld Litigation within the
5 meaning of Civ. L.R. 3-12(a) for the following reasons:

- 6 1. The alleged facts of both cases are intertwined. In the Blackburn
7 Litigation, the plaintiff, Svetlana Blackburn, alleges that Oracle terminated
8 her employment in retaliation for reporting that management engaged in
9 improper accounting practices which were intended to bolster the reported
10 financial results of Oracle's Cloud Services business. *See* Phillips Dec.
11 Exhibit A, Blackburn Complaint, at ¶ 9.²
- 12 2. The Klarfeld Complaint alleges that "Oracle used improper accounting
13 practices to inflate the Company's cloud computing revenues" and
14 terminated Svetlana Blackburn's employment in retaliation "for raising the
15 alleged improper accounting practices to her supervisors." *See* Phillips
16 Dec. Exhibit B, Klarfeld Complaint at ¶¶ 5-6.
- 17 3. Thus, although the complaints assert different causes of action,³ the core facts
18 alleged in each complaint involve the same accounting and retaliation allegations. As such, "[i]t
19 appears likely that there will be an unduly burdensome duplication of labor...or conflicting
20 results if the cases are conducted before different judges." Civ. L.R. 3-12(a)(2). *See Meaux v.*
21 *Northwest Airlines, Inc.*, 2006 U.S. Dist. LEXIS 48023, *3-5, 2006 WL 1867748 (N.D. Cal. July
22 6, 2006) (relating cases that alleged different causes of action but stemmed from the same facts
23 involving plaintiff's discipline and termination that were related to a customer complaint).

24 _____
25 ² Oracle denies the allegations in the Blackburn Litigation and Klarfeld Litigation.

26 ³ The Blackburn Litigation asserts four causes of action for whistleblower retaliation under
27 federal and state law; specifically, the Sarbanes Oxley Act, the Dodd-Frank Act, California Labor
28 Code 1102.5, and common law wrongful termination, while the Klarfeld Litigation asserts
securities class action claims under Section 10(b), Rule 10b-5 and Section 20(a) of the Exchange
Act.

1 5. For the foregoing reasons, Defendant respectfully requests that the Blackburn
2 Litigation and the Klarfeld Litigation be deemed related under Civ. L.R. 3-12(a). In addition,
3 given that (1) Oracle intends to decline the appointment of a Magistrate Judge in the Blackburn
4 Litigation, (2) the Tomassini Litigation may be transferred to the same Court as the Klarfeld
5 Litigation, and (3) the Plaintiff in the Blackburn Litigation does not oppose the Blackburn
6 Litigation being reassigned to the same Court as the Klarfeld Litigation (*see* Declaration of Renee
7 B. Phillips In Support of Motion to Relate at ¶ 6), Oracle respectfully requests that the Blackburn
8 Litigation be reassigned to the same Court as the Klarfeld Litigation. Civ. L.R. 3-12(f)(3).
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A Proposed Order accompanies this Motion.

Dated: July 18, 2016

Orrick, Herrington & Sutcliffe LLP

By: /s/ Kenneth Herzinger

KENNETH HERZINGER
Attorneys for Defendant
ORACLE AMERICA INC.